

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
825 North Capitol Street, NE Suite 4150
Washington, DC 20002-4210

In re:

MARK L. BECK, D.D.S.
Respondent

Case No.: DH-B-06-800035

FINAL ORDER

I. Introduction

This case arises under the District of Columbia Health Occupations Revision Act of 1985 (the “Act”), as amended, D.C. Official Code §§ 3-1201.01 *et seq.* On May 8, 2006, the Board of Dentistry (the “Board”) issued a Notice of Intent to Deny Application (the “Notice”) to Respondent, Mark L. Beck, with respect to his application for a license to practice Dentistry in the District of Columbia. In the Notice the Government alleged the following as the basis for its proposed denial of the Respondent’s application:

1. In February 2002, Respondent was convicted of health care fraud and practicing without a license, and that as a result the Board is authorized to deny Respondent’s application pursuant to D.C. Official Code § 3-1205.14(a)(4).

2. Respondent filed a statement with the Board of Dentistry that he knew or should have known was false or misleading in violation of D.C. Official Code § 3-1210.04¹. The Board may therefore deny the Respondent's license pursuant to D.C. Official Code § 3-1205.14(a)(24).

3. Respondent fraudulently attempted to obtain a license by submitting an incomplete report from the National Practitioner Data Base with his application. The Notice asserts that this action also provides a basis for denial under D.C. Official Code § 3-1205.14(a)(24).

4. The Respondent is addicted to or habitually abuses narcotics or controlled substances in violation of D.C. Official Code § 3-1205.14(a)(6).²

By letter dated May 22, 2006, Mr. Beck filed a request for a hearing with the Board. On May 30, 2006, Carla M. Williams, Esq., Assistant Attorney General, acting on behalf of the Board, filed a copy of Mr. Beck's hearing request with this administrative court along with a

¹ D.C. Official Code § 3-1210.04(a) provides in part:

No person shall file or attempt to file with any board . . . any statement . . . or other evidence if the person knows, or should know, that it is false or misleading.

² D.C. Official Code § 3-1205.14(a)(4), (6) and (24) provide:

(a) Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a majority of its members then serving, may take 1 or more of the disciplinary actions provided in subsection (c) of this section against any applicant, licensee, or person permitted by this subchapter to practice the health occupation regulated by the board in the District who: * * *

(4) Has been convicted in any jurisdiction of any crime involving moral turpitude, if the offense bears directly on the fitness of the individual to be licensed; * * *

(6) Is addicted to, or habitually abuses, any narcotic or controlled substance as defined by Unit A of Chapter 9 of Title 48; * * *

(24) Violates any provision of this chapter or rules and regulations issued pursuant to this chapter; * * *

letter asking this court to conduct the requested hearing and indicating that the Board was delegating its authority to hold a hearing in this matter to the Office of Administrative Hearings. [See D.C. Official Code § 2-1831.03(i)]. See *In re: Karen E. Fryer, L.S.W.A.*, OAH No. DH-B-04-80200 (Final Order, July 27, 2005).³

I scheduled an evidentiary hearing for October 4, 2006. At the hearing, Maureen W. Zaniel, Esq., appeared on behalf of the Government along with Maulid Miskell, Licensing Specialist for the Board of Dentistry. Mr. Miskell testified regarding the status of Mr. Beck's suspended license, the filing of his December 12, 2005 license application and previous criminal and administrative proceedings involving the Respondent. The Government also offered Petitioner's Exhibits ("PX") 100 through 105 which were received into the record.

Fredrick D. Cooke, Jr., Esq., represented Mr. Beck who testified on his own behalf. The Respondent also offered Respondent's Exhibits ("RX") 200 through 203, all of which were received into the record.

Based upon the testimony at the hearing, my evaluation of the credibility of the witnesses and the exhibits introduced into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

³ All cases in this opinion without a LEXIS citation are being transmitted to LEXIS (www.lexis.com) for publication in the District of Columbia Office of Administrative Hearings database.

1. In approximately 1989 Mr. Beck became a licensed dentist in the District of Columbia.
2. In 1991 and 1995 Mr. Beck entered treatment programs for chemical dependence and in 1996 pled guilty to possession of a controlled substance.
3. On March 1, 1999, the Board of Dentistry and Mr. Beck entered into a Consent Order (the “Order”) directing him to comply with certain conditions including that he enroll in a drug treatment program, submit monthly urine screens and remain drug free for 36 months. The Order further provided that Mr. Beck’s failure to comply with its conditions “shall result in the Summary Suspension of Respondent’s license.” PX 102.
4. At its meeting on December 8, 1999, the Board found that Mr. Beck had failed to submit documentation to the Board to establish that he had enrolled in an acceptable drug treatment program and had failed to submit monthly urine screens in violation of the Consent Order.
Id.
5. Based upon this finding, on January 12, 2000, the Board issued a “Final Decision and Order” suspending Mr. Beck’s license, “until such time as [he] fully complies with all of the terms of the Consent Order of March 1, 1999, or until such time as the Board modifies its Order and [he] has complied with the Board’s new Order.” *Id.*
6. On February 19, 2002, Respondent pled guilty to one count of violating 18 U.S.C. § 1347 for health care fraud and one count of violating D.C. Official Code §§ 2-3310.1 and 2-3310.7 for practicing medicine without a license. PX 100. Mr. Beck’s guilty plea was based in part on the factual proffer that he knew he was not authorized to practice dentistry because he did not have a license.

7. On February 22, 2002, Mr. Beck entered an in-patient drug treatment program at the Talbott Recovery Center (the “Talbott Center”) in Atlanta, Georgia. RX 200.
8. On May 10, 2002, Mr. Beck was discharged from the Talbott Center. At that time, the Talbot Center provided him with a comprehensive continuing care plan (the “CCC Plan”) which, among other things, recommended that Mr. Beck attend 90 Alcoholics Anonymous (“A.A.”) meetings in 90 days and attend four to seven meetings per week thereafter. The CCC plan further recommended that Mr. Beck return to the Talbott Center twice during the first year after his release and once each year during the following five years.
9. After leaving the Talbott Center, Mr. Beck completed a six-month residency program in Florida in order to comply with South Carolina’s requirements for licensure as a dentist. While in Florida he attended a drug treatment program conducted by the Physician’s Recovery Network (the “PRN”).
10. On January 8, 2003, the United States District Court for the District of Columbia sentenced Mr. Beck to imprisonment for a term of 16 months for health care fraud and 12 months for practicing medicine without a license, with both sentences running concurrently. PX 100. He began serving this sentence in November 2003.
11. Approximately three months after his incarceration, Respondent was released from prison and remained under post incarceration supervision until February 2007.
12. On November 22, 2004, as the result of his criminal conviction for health care fraud, the Department of Health and Human Services Departmental Appeals Board issued a decision

(the “DHHS Decision”) effective March 18, 2004, excluding Mr. Beck from participating in Medicare and Medicaid and all other health care programs for ten years. PX 103.

13. The DHHS Decision indicates that Mr. Beck asserted in the DHHS proceeding, as a mitigating circumstance, that at the time he committed this crime, “his failure to abstain from drug use...demonstrates that his judgment was clouded and that he was in denial.” *Id.*
14. Respondent did not perform the CCC Plan developed for him at the Talbott Center. Instead, he participated in the Florida NPN program and attends Narcotics Anonymous meetings approximately four times a month in Georgetown, South Carolina where he now lives and intends to practice dentistry. RX 201.
15. In October of 2005, Mr. Beck relapsed, used cocaine and as a result failed the random urine analyses required as a part of his post-incarceration supervision. At the direction of the Federal District Judge that had sentenced him to prison, Mr. Beck then attended an eight week treatment program.
16. On or about December 12, 2005, Mr. Beck submitted a New License Application to the Department of Health – Health Care Licensing and Customer Service Division (the “DOH”). On the application he answered “No” to the question which asks whether any authority or peer review board took adverse action against his license or privileges. PX 101. This statement was false.
17. In connection with his application, the Respondent submitted a report from the National Practitioner Database (the “NPD Report”) that indicated that he had failed to repay student

loans and as a result had been excluded from participating in Medicare and state health care programs on June 30, 1997. PX 104.

18. The complete NPD Report indicated that the Respondent had been excluded from participating in any Medicare or Medicaid program for ten years based upon his health care fraud conviction. The Respondent did not submit the portion of the Report that references his suspension. PX 105.

III. CONCLUSIONS OF LAW

The Government contends that Respondent's application for licensure as a dentist should be denied based upon his health care fraud conviction, his filing of an application containing false or misleading information, his submitting inaccurate information in an effort to obtain a dentist license and as a result of his cocaine addiction. Government's Proposed Findings ("GPF") pp. 4-7.

The Respondent does not dispute that he was convicted of health care fraud in 2002 or that he has a history of drug abuse; however, he contends that he has been a recovering substance abuser since February of 2002 and, other than a relapse in October of 2005, has been "clean and sober". With respect to the false statement on his application that no board took adverse action against his license or privileges, the Respondent asserts that he incorrectly assumed that the question only sought information that the Board was unaware of and that he did not intentionally attempt to mislead or deceive the Board. Similarly, the Respondent testified that he submitted the NPD Report that he received in the mail and did not realize that the report was incomplete. Respondent's Proposed Findings ("RPF") pp. 6-8.

A. Burden of Proof

Although the District of Columbia Administrative Procedure Act (“DCAPA”) normally governs the issue of burden of proof in an administrative proceeding, this is not the case when, as here, a statute or regulation of the District of Columbia specifies a different burden in a particular proceeding. D.C. Official Code §2-509(b) (“in contested cases, *except as may otherwise be provided by law*, other than this subchapter, the proponent of a rule or order shall have the burden of proof”) (emphasis supplied).

17 DCMR 4115.2 specifically governs the burden of proof in hearings involving the denial of an application for a health professional’s license.⁴ It provides:

In a hearing resulting from a proposed action to deny a license, certificate, or registration under § 4102.3, the applicant shall have the burden of satisfying the board of the applicant's qualifications by a preponderance of the evidence.⁵

As this case involves a proposed denial of Respondent’s application for a dental license, the Respondent has the burden of establishing his qualifications to practice dentistry by a preponderance of the evidence. *Baltimore Gas & Electric Co. v. Hendricks*, 693 A.2d 773 (Md.

⁴ The Mayor delegated rulemaking authority under the Act to the Director of the Department of Consumer and Regulatory Affairs, the agency which then administered the Act. Mayor’s Order 86-110, (July 18, 1988). The administration of the Act has since been delegated to the Department of Health. Mayor’s Order 98-140; *45 D.C. Reg. 6593* (September 11, 1998).

⁵ 17 DCMR 4102.3 (b) provides

An applicant for a license (other than a temporary license), certificate, or registration shall be given notice of and an opportunity for a hearing before the board regulating the health profession or the Director if the effect of the action would be one of the following: * * *

(b) To deny a license, certificate, or registration for any cause, except when the denial is based on the failure to meet a qualification over which the board has no discretion

1998) (where a statute, rule or regulation or case law specifies the burden of proof, that authority is controlling.)

B. Respondent's Addiction to Cocaine

In this case the Respondent acknowledged battling his cocaine addiction for over 15 years. He contends, however, that he is a recovering addict. Moreover, he testified that other than once in October 2005, he has not abused drugs since February 2002. This raises the issue of whether Mr. Beck's claimed rehabilitation from his drug addiction enables him to practice dentistry without posing a risk to the public. *Joseph v. District of Columbia Board of Medicine*, 587 A.2d 1085, 1088 (D.C. 1991) (protection of the public is of paramount concern). *Torriente v. Stackler*, 529 F.2d 498, at 501 (7th Cir., 1976) (noting that, "[a]ssuming that [the licensing body's] withholding of the certificate of license amounts to a pre-trial suspension, that is justified by the overriding public interest in seeing that only qualified persons be licensed to practice medicine")

1. Evidence of Rehabilitation

Contrary to Respondent's assertion, the Government is not required "to demonstrate by a preponderance of the evidence that Respondent is currently addicted to, or currently abuses a controlled substance". (RPF p. 7). Having testified that he is a "recovering substance abuser" (RPF p. 4), Mr. Beck squarely has the burden of establishing rehabilitation from his addiction and that he is thus qualified to practice dentistry. *See* Section A *infra*; 17 DCMR 4115.2; *Baltimore Gas & Electric Co.*, *supra*.

To find that Mr. Beck has sufficiently recovered from his chronic addiction would require, at a minimum, evidence of his completion of a treatment program that has a verifiable, success rate. Essential evidence would also include an evaluation of his current emotional condition and its impact upon his addiction. Both are matters that require expert opinion testimony. *See* Federal Rule of Evidence 701⁶ (witness may not offer testimony that is based on scientific, technical, or other specialized knowledge unless qualified as an expert) and Rule 702.⁷ *Randolph v Collectramatic, Inc.*, 590 F2d 844, (10th Cir. 1979) (Rule 701 does not permit lay witnesses to express opinion evidence as to matters which are beyond the realm of common experience, and which require special skill and knowledge of expert witness). Thus, an expert in drug rehabilitation might provide competent evidence to establish that Mr. Beck's treatment regimen and recovery rendered him unlikely to have another relapse; however, the record in this case is barren of any expert testimony on these critical issues. *Cf. In re Temple*, 629 A.2d 1203 (D.C. 1993) (in attorney discipline proceeding, expert testified that the risk of attorney returning to addictive behavior was minimal which resulted in probation rather than disbarment).

⁶ Fed R. Evid. 701 provides in part:

If the witness is not testifying as an expert, the witness' testimony ...is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

⁷ Fed. R. Evid. 702 provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

The fact that Mr. Beck has had only one relapse since 2002 is encouraging; however, this accomplishment must be weighed against the history of his addiction which he acknowledged began as early as 1991 when he entered a treatment program for chemical dependence. In 1995 he again entered a treatment program and in 1996 pled guilty to possession of a controlled substance. In 1999 Mr. Beck entered into a Consent Order with the Board of Dentistry directing him to enroll in a drug treatment program; however, within a year the Board suspended his license for his failure to comply with that Order.

In 2002 Mr. Beck pled guilty to health care fraud and practicing medicine without a license, crimes which he asserts resulted from his cocaine addiction. After entering this plea, he attended and completed the Talbot Center in-patient treatment program in Atlanta and the PRN drug treatment program in Florida. Also, after his relapse in October 2005, he attended an eight week program at the direction of the Federal District Judge who had sentenced him to prison and has since attended Narcotics Anonymous (“NA”) meetings approximately four times a month in Georgetown, South Carolina.

Significantly, after his release from the Talbot Center in 2002, Mr. Beck did not complete Talbot’s comprehensive continuing care plan (the “CCC Plan”) which, among other things, recommended that Mr. Beck attend 90 A.A. meetings in 90 days and attend four to seven meetings per week thereafter. Additionally, he did not return to the Talbott Center for further treatment as was also recommended in the Plan. No evidence established what rehabilitative effect, if any, might result from attending the Florida PRN program or four NA meetings a month. Moreover, there was no evidence to suggest that either the PRN program or the less frequent NA meetings could provide the same rehabilitative results as the more intensive CCC

Plan. Indeed, there was no competent evidence presented to establish the Talbot Center's success rate in treating drug addicts.

2. Risk to the Public

Mr. Beck's admitted history of addiction must be considered in the context of the duties performed by dentists. Under D.C. Code § 3-1201.02(5) a dental practice potentially entails:

(A) The diagnosis, treatment, operation, or prescription for any disease, disorder, pain, deformity, injury, deficiency, defect, or other physical condition of the human teeth, gums, alveolar process, jaws, maxilla, mandible, or adjacent tissues or structures of the oral cavity, including the removal of stains, accretions, or deposits from the human teeth; (B) The extraction of a human tooth or teeth; (C) The performance of any phase of any operation relative or incident to the replacement or restoration of all or a part of a human tooth or teeth with an artificial substance, material, or device; (D) The correction of the malposition or malformation of the human teeth; (E) The administration of an appropriate anesthetic agent, by a dentist properly trained in the administration of the anesthetic agent, in the treatment of dental or oral diseases or physical conditions, or in preparation for or incident to any operation within the oral cavity; (F) The taking or making of an impression of the human teeth, gums, or jaws; (G) The making, building, construction, furnishing, processing, reproduction, repair, adjustment, supply or placement in the human mouth of any prosthetic denture, bridge, appliance, corrective device, or other structure designed or constructed as a substitute for a natural human tooth or teeth or as an aid in the treatment of the malposition or malformation of a tooth or teeth; (H) The use of an X-ray machine or device for dental treatment or diagnostic purposes, or the giving of interpretations or readings of dental X-rays; or (I) The performance of any of the clinical practices included in the curricula of accredited dental schools or colleges

This definition of the "practice of dentistry" underscores the high degree of responsibility entrusted to licensed dentists. Dentists perform complex medical procedures requiring technical competence and careful concentration. A dentist that fails to practice with sound judgment, skill and due care obviously poses a risk to his patients. Mr. Beck's admitted conduct reveals a

pattern of substance abuse that in fact occurred during the time he was either licensed to practice dentistry or practicing as a dentist without a license.

Although there is no record that Mr. Beck injured any patient, he nonetheless ignored the risk his cocaine use posed to his patients. That Mr. Beck has only had one relapse since 2002 is a bright beacon in the long, difficult road of his addiction; however, this does not establish that the risk of his returning to addictive behavior is minimal. In view of the duties and functions performed by dentists, this risk poses a grave threat to public health and safety. On this basis alone, Mr. Beck's application must be denied. *Donahue v. District of Columbia Bd. of Psychology*, 562 A.2d 116 (D.C. 1989) (the Act confers a duty to protect the public from unqualified practitioners through licensure and regulation of the profession for the benefit of the public generally).

C. Conviction For Health Care Fraud

Respondent concedes that "the evidence supports a finding that Respondent was convicted of health care fraud." (RPF p. 7-8). The Government asserts that this conviction irrevocably bars Mr. Beck from obtaining a license. (GPF p. 6). In support of this proposition the Government cites D.C. Official Code § 3-1205.03 which provides in part:

"An individual applying for a license ... shall establish to the satisfaction of the board regulating the health occupation that the individual:

Has not been convicted of an offense which bears directly on the fitness of the individual to be licensed; ..."

1. Construction of § 3-1205.03

The rules of statutory construction are well established in this jurisdiction. The court must first look to the plain meaning of the statute, construing words “according to their ordinary sense and with the meaning commonly attributed to them.” *Davis v. United States*, 397 A.2d 951, 956 (D.C. 1979). “The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used.” *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983). “The literal words of [a] statute, however, are not the sole index to legislative intent, but rather, are to be read in the light of the statute taken as a whole, and are to be given a sensible construction” *District of Columbia v. Gallagher*, 734 A.2d 1087, 1091 (D.C. 1999) (quoting *Metzler v. Edwards*, 53 A.2d 42, 44 (D.C. 1947)). Each provision of the statute should be given effect, so as not to read any language out of a statute “whenever a reasonable interpretation is available that can give meaning to each word in the statute.” *School St. Assocs. Ltd. P’ship v. District of Columbia*, 764 A.2d 798, 807 (D.C. 2001) (en banc) (citing *Thomas v. District of Columbia Dep’t of Employment Servs.*, 547 A.2d 1034, 1037 (D.C. 1988) (“A basic principle is that each provision of the statute should be construed so as to give effect to all of the statute’s provisions, not rendering any provision superfluous.”)). *See also 1137 19th St. Assocs. Ltd. P’ship v. District of Columbia*, 769 A.2d 155, 161 (2001) (citation and internal quotations omitted) (“Effect must be given [to] every word of a statute[,] and interpretations that operate to render a word inoperative should be avoided.”)

The provision relied upon by the Government must be read in light of D.C. Official Code §§ 3-1205.14(a) and 3-1205.14(c) which the Government cited in the Notice as a basis for the proposed denial of Mr. Beck’s application. D.C. Official Code § 3-1205.14(a) provides in part as follows:

(a) Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a majority of its members then serving, *may take 1 or more of the disciplinary actions provided in subsection (c) of this section against any applicant*, licensee, or person permitted by this subchapter to practice the health occupation regulated by the board in the District who:

* * * * *

(4) Has been convicted in any jurisdiction of any crime involving moral turpitude, if the offense bears directly on the fitness of the individual to be licensed; (emphasis supplied)

Therefore, the denial of a license is among the disciplinary actions authorized by subsection (c) of § 3-1205.14;⁸ however, both subsection (c) and § 3-1205.14(a) provide that an occupational health board “may” take this action. Thus, under these subsections, although a board is vested with the discretion to deny a license application, a denial is not mandated in every case.

§ 3-1205.03 disqualifies an applicant only if the committed offense bears directly on the applicant’s fitness. Similarly, § 3-1205.14(a)(4) and § 3-1205.14(c), in identifying the commission of a crime of moral turpitude as a basis to deny a license, require that the “offense bears directly on the fitness of the individual to be licensed.” To harmonize these provisions, § 3-1205.03 must be construed to mandate disqualification only if the board, consistent with § 3-1205.14(a)(4), finds “to its satisfaction” that the “offense” has bearing on the applicant’s fitness to practice *at the time of the application*. In making this determination, the board, or an administrative law judge acting with the board’s authority, must consider factors such as the

⁸ D.C. Official Code § 3-1205.14(c) provides in part as follows:

Upon determination by the board that an applicant, licensee, or person permitted by this subchapter to practice in the District has committed any of the acts described in subsection (a) of this section, the board *may*:

(1) Deny a license to any applicant; * * * (emphasis supplied)

remoteness in time of the criminal conviction and the applicant's post conviction conduct. *In re Dortch*, 860 A.2d 346 (D.C. 2004) (in considering applications to the bar, "a per se rule of exclusion would collide with the principal that 'good character and fitness at the time of application is the appropriate test.'") Thus, notwithstanding a prior criminal conviction, an applicant's reform and rehabilitation must be considered. Accordingly, I hold that the blanket prohibition advocated by the Government is not warranted under the applicable statutes.

2. Is Health Care Fraud A Crime of Moral Turpitude?

A literal reading of § 3-1205.03 suggests that any offense bearing upon an applicant's fitness to practice a profession may disqualify an applicant; however, § 3-1205.14(a)(4) and § 3-1205.14(c) limit disqualifying offenses to "crimes of moral turpitude." Since I find that health care fraud is a crime of moral turpitude, it is not necessary to address this apparent conflict. Additionally, as a result of this finding, I need not determine whether practicing dentistry without a license may be properly deemed a crime of moral turpitude.⁹

Mr. Beck testified that he did not receive the Board's January 12, 2000 Order suspending his license; however, he does not contend that he did not intend to commit health care fraud. (RPF p 6-8). Moreover, Mr. Beck admitted during cross examination that his guilty plea was based in part on his factual proffer that he knew he was not authorized to practice dentistry because he did not have a license.

Through his plea, Mr. Beck acknowledged violating 18 USC § 1347. Under this statute one who "knowingly and willfully executes . . . a scheme or artifice-- (1) to defraud any health

⁹ See generally *Old Dominion Copper Mining & Smelting Co. v. Lewisohn*, 210 U.S. 206, 216 (1908) (Justice Holmes noting, "We decide only what is necessary.").

care benefit program; or (2) to obtain, by means of false or fraudulent pretenses . . . any of the money or property . . . of any health care benefit program” commits health care fraud. As Mr. Beck pled guilty to this charge in federal court, he may not credibly assert here that he did not knowingly commit health care fraud. *Oltman v. Maryland State Board of Physicians*, 875 A.2d 200 (Md. App. 2005) (final judgments in state and federal courts were conclusive proof that physician assistant committed a crime of moral turpitude and justified the revocation of his certificate by the Board of Physicians).

The Court of Appeals has repeatedly held that felonies involving fraud and/or dishonesty are crimes of moral turpitude. *In re Appler*, 669 A.2d 731 (D.C. 1995) (attorney billing fraud considered a crime of moral turpitude); *In re Lobar*, 632 A.2d 110 (D.C. 1993) (since wire fraud was a crime of moral turpitude, conspiracy to commit wire fraud inherently involved moral turpitude); *In re Kerr*, 675 A.2d 59 (D.C. 1996) (mail fraud deemed a crime of moral turpitude). Based upon Mr. Beck’s factual proffer at the time of his guilty plea and the language of the applicable, criminal statute, one must conclude that Mr. Beck’s offense, like those considered in the cited cases, involved fraudulent or dishonest conduct. Hence, Respondent’s conviction for health care fraud is a crime of moral turpitude.

3. Does The Offense Bear Directly on Respondent’s Fitness To Practice Dentistry?

As noted above, a violation of § 3-1205.14(a)(4) may not be grounded solely on the fact that a licensee or applicant engaged in a crime involving moral turpitude. The crime must also bear directly on the individual’s fitness to be licensed. In considering whether a criminal act bears directly on a person’s fitness to practice a particular profession, both the nature of the crime and the duties inherent in the profession must be considered. *Oltman, supra*, at 217.

(certificate of a physician's assistant was validly revoked when he pled guilty to altering a prescription even though the offense was a misdemeanor.) Here, the crime Mr. Beck committed involved using his license to practice dentistry as a means to fraudulently obtain funds he was not entitled to receive. Such conduct unquestionably undermines the integrity of the dental profession and indirectly damages the credibility of other dentists. In the context of a dental practice, a conviction for health care fraud bears directly on a person's fitness to engage in this profession. *Sidwell v. Maryland State Board Of Chiropractic Examiners*, 799 A.2d 444 (Md. App, 2000) (applicant's prostitution conviction "cast an unsavory, even menacing shadow" thus justifying denial of certification as a massage therapist).

Courts have recognized that a person who has committed criminal acts may pose a greater risk to the public than someone without a similar past history. *Richards v. District of Columbia Hacker's License Appeal Board*, 357 A.2d 439 (D.C. 1976). However, as noted in Section 1 *infra*, the critical inquiry is whether Mr. Beck's conviction, at the time of his application, has a direct bearing on his fitness to practice dentistry. As of that date, Mr. Beck had not been convicted of a crime for more than three years. After his incarceration, he worked as a dental assistant in his brother's dental practice in South Carolina and has taken several continuing education classes in the dental field. Although these endeavors evidence a desire to reform, it must be noted that during approximately 3 months of his rehabilitation, Mr. Beck was in prison.¹⁰ Although still properly credited towards his rehabilitation, the very nature of prison suggests that the time spent in such a restricted, confined setting must be discounted. Additionally, since leaving prison Mr. Beck has been serving his sentence under a supervised

¹⁰ Although the Judgment remanding him to the custody of the United States marshal is dated January 16, 2003. Mr. Beck testified that he entered prison in November 2003 and was released in January 2004.

release program. This fact also reduces, although to a lesser degree, the weight that this period of rehabilitation might otherwise have in establishing that Mr. Beck is unlikely to repeat his criminal conduct. *Dortch, supra*.

Most significantly, Mr. Beck's crime is directly linked to his drug addiction. As indicated in the DHHS Decision which disqualified him from participating in government medical programs, Mr. Beck recognized that his addiction was at the root of his criminal activity. His addiction "clouded his judgment." PX 103. Hence, until his drug rehabilitation is complete, it can not be held that Mr. Beck's likelihood of recidivism is minimal. *In re Apler, supra*, at 740. (court did not find that attorney was unlikely to commit further misconduct where he failed to establish rehabilitation from the bi-polar condition that lead to his fraud.) As set forth in section B *infra*, the record does not support a finding that Mr. Beck has successfully completed his drug rehabilitation. Accordingly, considering the totality of the circumstances in this case, I conclude that Mr. Beck's conviction for mail fraud continues to have a direct bearing on his fitness to practice dentistry and his application must also be denied on this basis.

D. Filing A False Application And False Information

The Government contends as additional grounds for denial of Mr. Beck's application that his application contained false or misleading information and that he submitted inaccurate information in an effort to obtain a dentist license. Either charge, if proven, provides grounds for the denial of Mr. Beck's application. D.C. Official Code §§ 3-1205.14(c), 3-1205.14(a)(24) and 3-1210.04(a). Both turn on the credibility of Mr. Beck's assertion that he misunderstood the pertinent question on the application and that he unknowingly provided an incomplete report.

1. Credibility

With respect to its claim that Mr. Beck falsified his application, the Government alleges that in response to a question in the application which asked whether any authority had taken adverse action against his license or privileges, Respondent answered “No.” (GPR p. 5). Yet, the DHHS Decision disqualified him from participating in Medicare/Medicaid and all other health care programs for ten years beginning in March 2004, a sanction imposed directly as a result of his health care fraud conviction.

Additionally, Mr. Beck submitted a report to the Board from the National Practitioner Database that only referenced his failure to repay student loans. Mr. Beck did not provide a portion of the complete report indicating that he had been excluded from participating in the Medicare/Medicaid program.

Respondent concedes that the answer in his application was incorrect and that the NPD Report was incomplete. He testified, however, that he misread the question and understood that the application only sought information that was already known to the Board. (RPN p. 3). Therefore, he asserts that he did not intentionally attempt to mislead or deceive the Board. Similarly, Mr. Beck testified that he submitted the NPD Report that he received in the mail and did not realize that this report was incomplete. (RPN p. 4).

The most striking aspect of Mr. Beck’s testimony on these two points is that his omission on the application mirrors NPD’s omission in the report it purportedly mailed to him. In effect, he asserts that both he and NPD made an identical error, the failure to provide information regarding his DHHS disqualification. Absent this mutual “mistake”, Mr. Beck argues that concealment of the disqualification would not have occurred. Either the application or the NPD

Report could have informed the Board of the DHHS Decision. That neither did suggests that Mr. Beck falsely answered the application question and then deleted the pages from the NPD Report that would have revealed his deception. That both he and NPD inadvertently omitted the same exact information in the manner Mr. Beck described is inherently improbable.

Additionally, Mr. Beck's testimony regarding the NPD Report was inconsistent and contradictory. On cross examination Mr. Beck testified that when he received the report he removed it from the envelope and did not notice that it was incomplete. Yet, he also testified that he never opened the envelope containing the report but rather mailed it to the Board unopened. When pressed regarding this inconsistency he testified that he could not remember whether he had opened the envelope and examined the report or not. These contradictions discredit Mr. Beck's testimony on the critical question of whether he deliberately submitted an incomplete NPD Report.

For these reasons, I do not find Mr. Beck's claims, that he misunderstood the pertinent question on the application and did not realize the NPD Report was incomplete, to be credible.

2. Violation of § 3-1210.04(a)

The reasons for Mr. Beck's submission of a false application and a partial NPD Report are unclear. As his counsel asserts and the Government concedes, the Board had been previously apprised of the health care fraud conviction which was the basis for the DHHS Decision. Yet, it is unnecessary to speculate in this proceeding as to what Mr. Beck's motivation may have been. The credible evidence establishes that Mr. Beck knew that he answered question 7(I) on the application falsely and that he deliberately provided an incomplete NPD Report.

Mr. Beck's filing of a statement with the Board that he knew or had reason to know was false violates D.C. Official Code § 3-1210.04(a). ("no person shall file or attempt to file with any board . . . any statement . . . or other evidence if the person knows, or should know, that it is false or misleading"). Mr. Beck's deliberate filing an incomplete NPD Report also violated this provision. Both violations of § 3-1210.04(a) fall squarely within the ambit of D.C. Official Code § 3-1205.14(a)(24) and thus provide additional grounds to deny his license application under D.C. Official Code § 3-1205.14(c). *In Re: Ikenna Onachuna*, OAH No. DH-B-04-80205 (Final Order, June 7, 2006) (Board of Nursing properly denied application because applicant filed a false and misleading statement with the Board). *In re Alvin Bethea* OAH No. DH-B-05-800020 (Final Order, July 14, 2006) (applicant's cocaine conviction and false statements about his criminal record provided independent grounds for Board's denial of an applicant's renewal license to practice respiratory care).

E. Summary

Mr. Beck has long suffered as an addict, often attempted rehabilitation, and continues his efforts to recover from chronic substance abuse. An addiction is not an absolute bar to practicing a health occupation. "[T]he concept that human redemption is possible and valuable is both well established in law and premised upon long-standing, even ancient traditions." *In re Prager*, 661 N.E.2d 86, at 89 (Mass 1976). This decision should therefore not be construed to minimize Mr. Beck's recent strides to recover from his addiction. Nor is it intended to extinguish his hope of someday resuming the practice of dentistry. Given further time and treatment and upon filing an accurate application, Mr. Beck might well establish rehabilitation from his addiction and crime; however, the evidence in this proceeding demonstrates that at this time his return to the practice of dentistry would pose a threat to the public.

Under D. C. Official Code § 3-1205(a)(6), Mr. Beck's application to practice dentistry must be denied because the evidence in this case does not establish that he has overcome his drug addiction. The denial of Mr. Beck's application is also authorized because he committed a crime of moral turpitude that at the time of his application bears directly on his fitness to be licensed. *See* D.C. Official Code §§ 3-1205.14(a) (4) and D.C. Official Code § 3-1205.14(c). Finally, the intentionally false statement on his application concerning his DHHS disqualification and his deliberate submission of an incomplete report violate D.C. Official Code § 3-1210.04 and thus a denial of his application is appropriate under D.C. Official Code § 3-1205.14(a) (24).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is this ____ day of February 2007

ORDERED that the Board's Notice of Intent to Deny Application is **AFFIRMED** and the application of Mark Beck for a license to practice dentistry is **DENIED**; and it is further

ORDERED, that the appeals rights of any person aggrieved are listed below.

February 16, 2007

/s/
Louis J. Burnett
Administrative Law Judge